

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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*In the Matter of:*

Little America Post Office  
Little America, Wyoming 82929

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Docket No. A2012-64

**MOTION OF UNITED STATES POSTAL SERVICE  
TO DISMISS PROCEEDINGS**

(November 22, 2011)

On, November 14, 2011, the Postal Regulatory Commission (Commission) docketed correspondence from a customer of the Little America, Wyoming Post Office, assigning PRC Docket No. A2012-64 as an appeal, pursuant to 39 U.S.C. § 404(d). That correspondence purported to invoke the Commission's jurisdiction to consider an appeal of a Postal Service Final Determination to close the Little America, Wyoming Post Office. The appeal was sent to the Commission by Express Mail service, was postmarked on November 3, 2011, and received by the Commission on November 4, 2011.<sup>1</sup>

The appeal was untimely filed. Under 39 U.S.C. § 404(d)(5), "[a] determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory

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<sup>1</sup> A copy of the Express Mail Envelope used to transmit the appeal is attached. The envelope indicates that the document was postmarked on November 3, 2011. (See Exhibit 1.) The United States Postal Service Track/Confirm Inquiry shows that the Express Mail Envelope was received by the Postal Regulatory Commission on November 4, 2011. (See Exhibit 2.)

Commission within 30 days after such determination is made available to such person.”<sup>2</sup> Section 404(d)(6) provides that:

[f]or purposes of paragraph (5), any appeal received by the Commission shall –

- (A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or
- (B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).<sup>3</sup>

In this case, the Final Determination to Close Little America, WY, Post Office and Continue to Provide Rural Route Service was posted at the Little America, Wyoming Post Office from August 29, 2011 through September 30, 2011. Thus, it is clear that the appeal was untimely filed. As indicated above, the appeal was postmarked November 3, 2011 and received by the Commission on November 4, 2011. Both dates are well after September 30, 2011, the end of the Final Determination posting period in this docket.<sup>4</sup>

Statutory time limits for the initiation of legal action set by Congress, such as 39 U.S.C. § 404(d)(5), are limited waivers of sovereign immunity that define the jurisdiction of the reviewing body. See Irwin v. Dept. of Veterans Affairs, 498 U.S. 89 (1990). Irwin involved the interpretation of 42 U.S.C. § 2000e-16(c), which sets a 30 day time limit in language very similar to that used in section 404(d)(5): “[w]ithin thirty days of receipt of notice of final action taken by ... the

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<sup>2</sup> 39 U.S.C. § 404(d)(5).

<sup>3</sup> 39 U.S.C. § 404(d)(6).

<sup>4</sup> The Postal Service attaches to this pleading the round-date stamped Final Determination to Close Little America, WY, Post Office and Continue to Provide Rural Route Service, which was posted at the Little America, Wyoming Post Office from August 29, 2011 through September 30, 2011. (See Exhibit 3.)

Equal Employment Opportunity Commission, [an aggrieved party] may file a civil action ...." Id. at 94. The Supreme Court noted the similarity of this time limit to others applicable in suits filed against the government, and that such congressional waivers of sovereign immunity must be construed very narrowly. Id. The same principle applies here and militates in favor of dismissal.

In sum, the 30 day time limit embodied in section 404(d)(5) is a limit upon the jurisdiction of the Commission that must be strictly construed. Therefore, the Commission should dismiss the late appeal as untimely and moot.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
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November 22, 2011

# EXHIBIT 1

PRESS HARD, YOU ARE MAKING 3 COPIES.

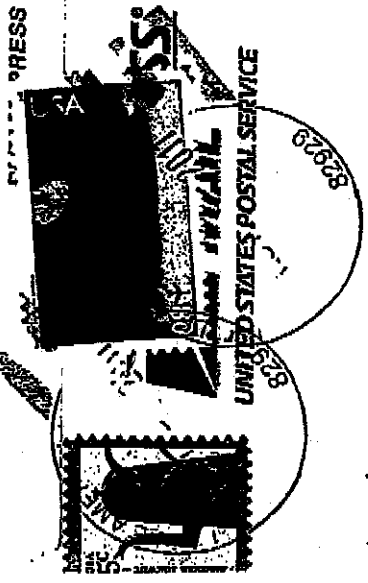
<b>ORIGIN (POSTAL SERVICE USE ONLY)</b> PO ZIP Code: 82922 Date Accepted: 11/3/11 Time Accepted: 1:00 PM Flat Rate or Weight: 2 lbs. 2 ozs.		Day of Delivery: <input checked="" type="checkbox"/> Next <input type="checkbox"/> 2nd Day Scheduled Delivery: 11/5/11 Month: 11 Day: 5 Year: 11		Postage: \$ 18.30 Return Receipt: \$ 23.05 Insurance Fee: \$ 23.45 Total Postage & Fees: \$ 64.80	
FROM: PLEASE PRINT Byron Wall Little America Hotel General Delevoy Little America Wy 82929		PHONE: 307-875-2400 307-677-4655		ACCEPTANCE ZIP: 82929	



EG 711028975 US



7004 0810 0005 2588 1865



**Flat Rate Mailing Envelope**  
 For Domestic and International Use  
 Visit us at usps.com

**EXPRESS MAIL**  
 UNITED STATES POSTAL SERVICE®  
 Mailing Label  
 Label T-8, March 2004

DELIVERY (POSTAL SERVICE USE ONLY)		CUSTOMER USE ONLY	
Delivery Attempt	Time	Employee Signature	
Ms. Day	Time	Employee Signature	
Ms. Day	Time	Employee Signature	
Ms. Day	Time	Employee Signature	

**NO DELIVERY**  
☐ No Delivery  
☐ No Signature  
☐ No Signature  
 TO: PLEASE PRINT PHONE 1

Postal Regulatory Commission  
 901 New York Ave NW Suite 200  
 Washington DC

ZIP + 4 (U.S. ADDRESSES ONLY DO NOT USE FOR FOREIGN POSTAL OFFICES)  
 20268+0001

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.



PLEASE PRESS FI.

# on Express Label

When used Internationally  
 affix customs declarations  
 (PS Form 2976, or 2976A).



USPS packaging products have been awarded Credit to Charge Certifications for their ecologically intelligent design. For more information go to [info.usps.com/green](http://info.usps.com/green)

Please recycle.

## EXHIBIT 2

PRC DOCKET No. A2012-64



## Track/Confirm - Intranet Item Inquiry - Domestic

Tracking Label: EG71 1028 975U S

<b>Destination</b>	<b>ZIP Code:</b> 20268-0001	<b>City:</b> WASHINGTON	<b>State:</b> DC
<b>Origin</b>	<b>ZIP Code:</b> 82929-9900	<b>City:</b> LITTLE AMERICA	<b>State:</b> WY

**Class/Service:** Express Mail PO-Add

Service Calculation Information

**Service Performance Date**

Guaranteed Delivery Date / Time: 11/04/2011 12:00

**Weight:** 0 lb(s) 2 oz(s)**Postage:** \$18.30**Firm Book ID:** 5103 OSGU A667 5280 0906**Delivery Option Indicator:** No Sunday or Holiday Delivery**PO Box?:** N**Rate Indicator:** EXPRESS MAIL FLAT RATE POST OFFICE TO ADDRESSEE**Special Services**

Return Receipt

**Associated Labels**

EG71 1028 975U S

**Amount**

\$2.30

Event	Date/Time	Location	Scanner ID
DELIVERED	11/04/2011 10:36	WASHINGTON, DC 20268	030SHQ10TT
<b>Input Method:</b> Firm Book			
<b>Finance Number:</b> 105010			
Firm Name: POSTAL RATE 20268R22			
Recipient: 'J ARTIS'			
<a href="#">Request Delivery Record</a>			
<a href="#">View Delivery Signature and Address</a>			
SORTING/PROCESSING COMPLETE	11/04/2011 10:27	WASHINGTON, DC 20022	
<b>Input Method:</b> System Generated			
ARRIVAL AT UNIT	11/04/2011 09:55	WASHINGTON, DC 20022	030SGUA667
<b>Input Method:</b> Firm Book			
ENROUTE/PROCESSED	11/04/2011 08:22	WASHINGTON, DC 20074	EESS-002- 000001
<b>Input Method:</b> Scanned			
DEPART USPS SORT FACILITY	11/03/2011 20:04	SALT LAKE CITY, UT 84199	

**Input Method:** System Generated**Dispatch Label ID:** DS1441454000111103210833

ENROUTE/PROCESSED 11/03/2011 18:33

SALT LAKE CITY, UT  
84199

030SHQ151T

**Input Method:** Scanned

ACCEPT OR PICKUP 11/03/2011 13:00

LITTLE AMERICA, WY  
82929**Input Method:** Manually Entered**Enter Request Type and Item Number:****Quick Search** ☒**Extensive Search** ☐[Explanation of Quick and Extensive Searches](#)**Submit***Version 1.0*Inquire on multiple items.Go to the Product Tracking System Home Page.



## EXHIBIT 3

EXHIBIT 3  
PRC DOCKET No. A2012-64



Date of Posting:

Date of Removal:



FINAL DETERMINATION TO CLOSE  
THE LITTLE AMERICA, WY POST OFFICE  
AND CONTINUE TO PROVIDE  
SERVICE BY HIGHWAY CONTRACT ROUTE SERVICE

DOCKET NUMBER 1370618 - 82929